

1 DANIEL G. BOGDEN
United States Attorney
2 District of Nevada
ROGER W. WENTHE
3 Assistant United States Attorney
Nevada Bar No. 8920
4 U.S. Attorney's Office
333 Las Vegas Boulevard South, Suite 5000
5 Las Vegas, Nevada 89101
Ph: 702-388-6336
6 Fax: 702-388-6787
Email: roger.wenthe@usdoj.gov
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8 Attorneys for the United States.
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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 ZANE E. GOODFIELD,

13 Plaintiff,

14 v.

15 CAROLYN COLVIN, Acting
Commissioner of Social Security,

16 Defendant.

) Case No.: 2:13-cv-1331-GMN-VCF
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17 **DEFENDANT'S APPLICATION FOR STAY DURING LAPSE IN**
18 **APPROPRIATIONS**

19
20 Defendant Carolyn Colvin, Acting Commissioner of Social Security, requests
21 the Court to stay proceedings in this matter during the period of lapse in
22 appropriations for the United States Department of Justice and the Federal Defendant.

23 At midnight on September 30, 2013, the continuing resolution that was funding
24 the Department of Justice and appropriations to the Department lapsed. The same is
25 true for most Executive Branch agencies, including the Federal Defendant involved in
26 this case. The date when funding will be restored by Congress has not been
27 established.
28

1 The Anti-deficiency Act, 31 U.S.C. §1341, as construed by the Attorney
 2 General, provides that in the absence of appropriated funds no obligation can be
 3 incurred except for the protection of life and property, the orderly suspension of
 4 operations, or as otherwise authorized by law. This means that absent an
 5 appropriation, Department of Justice attorneys and employees of the Federal
 6 Defendant's agencies are prohibited from working, even on a volunteer basis, "except
 7 for emergencies involving the safety of human life or the protection of property." 31
 8 U.S.C. §1342. Accordingly, each U.S. Attorney has been instructed to designate those
 9 attorneys and support staff whose work is necessary to sustain legal operations
 10 essential to the safety of human life and the protection of property. The Department
 11 of Justice has issued guidance which gives priority to continuing work on criminal
 12 cases. Consequently, only a very few employees in the Civil Division of the United
 13 States Attorney's Office for the District of Nevada will be authorized to work during a
 14 lapse in appropriations – the rest will be furloughed.

15 The agency attorneys assigned to handle Social Security appeals, who
 16 participate in all aspects of the preparation and filing of pleadings in Social Security
 17 appeals cases, have also been furloughed for the duration of the lapse in
 18 appropriations. The need for the relief of a stay is urgent because of the following
 19 impending deadline(s):

20	<u>Item</u>	<u>Due Date</u>
21	Defendant's answer	October 18, 2013

22 Therefore, the undersigned counsel requests a stay of this matter until Congress
 23 has restored appropriations and the assigned attorneys are permitted to resume work
 24 on this case.

25 Denial of a stay in this matter would be prejudicial to the interests of the United
 26 States. Appeals such as this one require familiarity with the administrative record and
 27 with the procedures applicable to Social Security disability benefits determinations.
 28 The Government does not have civil attorneys available to become conversant with

1 this entire case in the short time available to complete the filing required next week,
2 nor could an attorney adequately present the position of the United States on that
3 matter due to the lack of familiarity with the case and its issues. Plaintiff will not be
4 prejudiced by the proposed delay because the delay is not anticipated to significantly
5 alter the course of resolution of this matter.

6 If this motion for a stay is granted, undersigned counsel will notify the Court as
7 soon as Congress has appropriated funds. It is requested that, at that time, all current
8 deadlines for the parties be extended commensurate with the duration of the lapse in
9 appropriations. A form of order is attached.

10 Dated this 4th day of October, 2013.

11 DANIEL G. BOGDEN
12 United States Attorney

13 /s/ Roger W. Wenthe
14 ROGER W. WENTHE
15 Assistant United States Attorney
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PROOF OF SERVICE

I, Roger W. Wenthe, certify that the following individual was served with a copy of the foregoing document, on the date shown, by the below identified method of service:

CM/ECF:

Leonard H Stone
Shook & Stone Chtd.
710 S. Fourth St.
Las Vegas , NV 89101

Marc V Kalagian
Rohlfing & Kalagian, LLP
211 E. Ocean Blvd. Suite 420
Long Beach , CA 90802

Dated: October 4, 2013

/s/ Roger W. Wenthe
ROGER W. WENTHE
Assistant United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ZANE E. GOODFIELD,

Plaintiff,

v.

CAROLYN COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No.: 2:13-cv-1331-GMN-VCF

**ORDER FOR STAY OF PROCEEDINGS DURING LAPSE IN
APPROPRIATIONS**

1. The Court has been advised that at midnight on September 30, 2013, the continuing resolution that was funding the Department of Justice expired and the appropriation of funds to the Department lapsed. The same is true for most Executive Branch agencies, including the federal agencies involved in litigation in this District.

2. Absent an appropriation, Department of Justice attorneys and employees of the federal agencies are prohibited from working, even on a volunteer basis, “except for emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342. Civil cases are not deemed to be within this exemption.

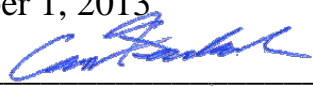
3. The Court has been informed that the lapse in appropriations therefore prevents Department of Justice attorneys and their federal agency counterparts from appearing at hearings and depositions and performing work necessary to meet case deadlines, including those imposed by statute, the Federal Rules of Civil Procedure, the Civil Local Rules of this District, and by case management orders issued in individual cases. This situation will cause prejudice to the interests of the United States and the federal agencies, officers, and employees involved in civil litigation in this District.

1 WHEREFORE, the Court finds that good cause exists to stay proceedings in the
2 cases identified in the attached list until Congress has restored appropriations.


3 IT IS THEREFORE ORDERED that all time limits and deadlines in this case
4 are extended for a period of time equal to the duration of the lapse in appropriations to
5 the Department of Justice and the Federal Defendant and depositions and court
6 hearings are vacated. Further, this stay does not apply to applications for emergency
7 relief.

8 This Order shall apply nunc pro tunc to October 1, 2013.

9 DATED: October ⁴ __, 2013



United States ~~District~~ Judge
Magistrate

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13  Defense counsel must file a notice to Plaintiff's counsel and the
14 Court as soon as Congress has appropriated funds. This notice must
15 state the duration of the lapse in appropriations to the Department of
16 Justice and the Federal Defendant.

17 IT IS SO ORDERED.
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